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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING**

UNITED STATES OF AMERICA,                          )  
  )  
Plaintiff,    )  
  )  
vs.    )         No. 10-CR-329  
  )  
**Miguel Angel Ordaz,**                              )  
  )  
Defendant.    )

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**DEFENDANT ORDAZ'S MOTION TO EXCLUDE ALL REFERENCE TO GANG  
AFFILIATION AND PRIOR CRIMINAL RECORD AND/OR PRIOR ACCUSATIONS  
AGAINST DEFENDANT ORDAZ**

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**COMES NOW**, Defendant, **Miguel Angel Ordaz**, by and through his counsel, Peter J. Timbers of Schwartz, Bon, Walker & Studer, LLC, and hereby moves the Court to prohibit the United States of America and/or its counsel from suggesting, inferring, or discussing before the jury in any fashion – whether during voir dire, opening, closing, or in any other phase of the trial – or proffering any evidence concerning the following subjects:

1. Evidence of gang membership and/or affiliations, including, but not limited to photographs, pictures, artwork, statements, etc.

Such evidence is prohibited by Federal Rule 102 in that it would be unfair to prejudice the defendant with matters that do not concern criminal activity based upon

his membership in or affiliation with any organization in Fresno, California or any other location.

Such evidence is prohibited under Federal Rule 401. Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Defendant submits that the United States of America can present its case without prejudicing the defendants regarding their social affiliations with each other.

Such evidence is a violation of Federal Rule 402. Evidence may be excluded because it does not show any crime or advance the proof of charges against the defendant.

Such evidence is a violation of Federal Rule 403 if its probative value is substantially outweighed by the danger of unfair prejudice or misleading the jury. It is highly likely that Hispanic men shown as gang members would be prejudiced by a jury based upon mere membership in any gang or potentially criminal organization.

Such evidence is violative of Federal Rule 404 (a). Proof of membership in any gang should not be allowed to be offered for proof of conformity consistent with the gang's actions. Such evidence regarding a possibly known gang could be interpreted by the jury as evidence and character of the defendant.

Such evidence is violative of Federal Rule 404 (b). Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.

2. Prior criminal activity or alleged criminal activity. Pursuant to Federal Rule 404 (b) evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity there with.

**WHEREFORE**, Defendant **Miguel Angel Ordaz** respectfully requests this Court issue an order prohibiting the United States of America and/or its counsel from suggesting, inferring, or discussing before the jury in any fashion – whether during or dear, opening, closing, or in any other phase of the trial – or proffering any evidence concerning: (1) Prior criminal activity or alleged criminal activity of defendant Miguel Ordaz and (2) Evidence of gang membership and/or affiliations, including, but not limited to photographs, pictures, artwork, statements, etc., for any of the defendants.

**DATED** this 15th day of May, 2011.

/s/Peter J. Timbers

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Attorney for Defendant

**CERTIFICATE OF SERVICE**

I, Peter J. Timbers, certify that a true and correct copy of the foregoing document, *DEFENDANT ORDAZ'S MOTION TO EXCLUDE ALL REFERENCE TO GANG AFFILIATION AND PRIOR CRIMINAL RECORD AND/OR PRIOR ACCUSATIONS AGAINST DEFENDANT ORDAZ*, was served upon the United States Attorney and the parties involved in this matter by CM/ECF electronic mail notification, this 15th day of May, 2011:

/s/Peter J. Timbers

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